

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRED McGUINNESS and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, West Palm Beach, FL

*Docket No. 00-2418; Submitted on the Record;
Issued April 24, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on March 3, 2000 on the grounds that he refused an offer of suitable work.

On April 8, 1998 appellant, then a 40-year-old flat sorter machine operator, filed a claim for a recurrence of disability related to an injury he sustained on April 13, 1992. In a letter dated July 2, 1998, appellant stated that he had undergone three surgeries for an inguinal hernia -- on April 13, 1992, January 4, 1993 and March 22, 1996 -- and that his groin pain became intolerable after he tried to lift a heavy container of mail on March 29, 1998.

The Office accepted bilateral ilioinguinal neuralgia caused by multiple hernias and aggravated by lifting on March 29, 1998 and began payment of compensation for temporary total disability.

On March 8, 1999 the Office found that appellant's reasons for refusing a January 29, 1999 offer of suitable employment were not acceptable and gave appellant 15 days to accept the offer or have his compensation terminated for refusing suitable work. On March 22, 1999 appellant accepted the employing establishment's offer and returned to work for four hours a day on April 7, 1999. He did keying on the flat sorting machine and distributed mail into a manual case, using a rest bar. Appellant worked part time until May 20, 1999 and returned to full-time duty on July 15, 1999.

In a report dated July 12, 1999, appellant's attending physician, Dr. Albert I. Rodriguez, a Board-certified anesthesiologist who specializes in pain management, stated that a functional capacity evaluation on June 17, 1999 "basically demonstrated the ability to work full time at a light level." Dr. Rodriguez indicated that appellant was not limited in sitting and that he could walk or stand for three to five hours.

In a report dated September 29, 1999, Dr. Rodriguez noted that appellant was asking him for assistance regarding a problem at work involving “certain duties that he has which involve forward flexion of the spine for prolonged periods of time which seem to aggravate the chronic ilioinguinal neuralgia that he suffers from.” Dr. Rodriguez stated that if the functional capacity examination did not cover the movement that appellant described, it would be “prudent that he return for another functional capacity examination just focusing on the movement or position that he is describing while at work to better assess the restriction, if any is necessary.”

In a note dated September 29, 1999, Dr. Rodriguez requested that appellant be excused from work for treatment of chronic ilioinguinal neuralgia. The Office paid compensation for temporary total disability from September 23 through October 1, 1999.

By letter dated October 4, 1999, the employing establishment offered appellant a position as a permanent modified manual distribution clerk. The duties of this position were listed as distributing mail into a regular letter case using the rest bar provided on the stool and into a flat case while standing, keying on a flat sorting machine and performing other tasks within the physical limitations outlined by appellant’s physician. The physical requirements included no restriction on sitting and walking and standing of three to five hours per day.

By letter dated November 15, 1999, the Office advised appellant that it had found the job offered by the employing establishment to be suitable, allotted appellant 30 days to accept the offer or provide an explanation for not accepting it and advised him of the provisions of section 8106(c)(2) of the Federal Employees’ Compensation Act.¹

In a report dated November 30, 1999, Dr. Rodriguez stated:

“Apparently the patient is still having trouble at work. He is not able to fulfill his duties with the current restrictions. This is similar to what his complaint was when I last saw him in September of this year. I again explained to him that I feel that it is imperative that he see a physiatrist in particular, who would be better able to help him with this problem. I recommend that he have a repeat functional capacity examination if he is not able to fulfill his current duties with the restrictions made by the original examiner. Apparently his wife sees Dr. Joseph J. Alshon, a physiatrist in Del Ray and would like to know if I could refer him to this physician.”

In a note dated November 30, 1999, Dr. Rodriguez referred appellant to Dr. Alshon, an osteopath who specializes in physical medicine and rehabilitation.

In a letter dated December 8, 1999, appellant stated, “I attempted to get Dr. Rodriguez to modify or clarify the restrictions listed on the offer, as I have been having some difficulty adhering to them.” After noting that Dr. Rodriguez had referred him to Dr. Alshon, appellant stated, “I want to assure you that I intend to accept the job offer with a few minor changes to my restrictions.”

¹ 5 U.S.C. § 8101; § 8106(c)(2).

By letter dated December 20, 1999, the Office authorized treatment by Dr. Alshon, requested that appellant have this physician submit a report of his evaluation and advised appellant that the Office would “hold off on making a final decision on the suitability of the job offer made to you until we get Dr. Alshon’s report.”

After ascertaining from the employing establishment that the offered position was still available, the Office, by letter dated February 16, 2000, advised appellant that there was no evidence that Dr. Rodriguez’ work restrictions were not still valid or that the position was not still available. The Office allotted appellant 15 days to accept the offer. By letter dated February 25, 2000, appellant’s wife, whom appellant had authorized to represent him, stated that Dr. Alshon’s office was expecting further information from the Office before appellant could make an appointment.

By decision dated March 3, 2000, the Office terminated appellant’s compensation on the grounds that he had refused an offer of suitable employment.

By letter dated May 15, 2000, appellant requested reconsideration and submitted a report dated March 13, 2000 from Dr. Alshon. After setting forth a history of appellant’s treatment and findings on physical examination, he noted that appellant complained of “increased pain with transfers and when he is on his feet for prolonged periods of time.” Dr. Alshon diagnosed chronic bilateral groin pain, right worse than left and status postmultiple inguinal herniorrhaphies. He stated that appellant’s symptoms were most likely related to scar tissue, that it was questionable whether he had an ilioinguinal entrapment syndrome if he did not have a favorable response to nerve blocks and that it was doubtful that a central herniated disc seen on magnetic resonance imaging was contributing to his symptomatology. Dr. Alshon recommended treatment related to pain management and stated: “I advised the patient that he can return to work full time as a distribution clerk providing that he avoids leaning on a ‘rest bar’ or other pieces of furniture. I recommend that he sit with his feet supported either on the floor or on a footrest.”

By decision dated June 1, 2000, the Office found that Dr. Alshon’s report was insufficient to warrant modification of the Office’s prior decision.

The Board finds that the Office properly terminated appellant’s compensation on March 3, 2000 because he refused an offer of suitable work.

Under section 8106(c)(2) of the Act, the Office may terminate the compensation of an employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee.² To justify termination of compensation, the Office must establish that the work offered was suitable.³

The physical requirements of the position of modified manual distribution clerk offered to appellant on October 4, 1999 were within the work tolerance limitations set forth by

² 5 U.S.C. § 8106(c)(2) provides in pertinent part: “A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered to, procured by, or secured for him; is not entitled to compensation.”

³ *David P. Camacho*, 40 ECAB 267 (1988).

Dr. Rodriguez on August 17, 1999, who determined that appellant could work full time at a light level of work. At the time of the Office's March 3, 2000 decision, terminating appellant's compensation for refusing suitable work, there was no medical evidence indicating that appellant could not perform the duties of the offered position. The medical evidence at the time of the Office's March 3, 2000 decision established that the position of modified manual distribution clerk was suitable.

The Office also complied with the procedural requirements for terminating compensation under section 8106(c)(2) of the Act.⁴ In its November 15, 1999 letter, the Office advised appellant that it had found the offered position to be suitable, allotted him 30 days to accept the position or provide reasons for not accepting it and notified him of the provisions of section 8106(c)(2) of the Act. In its February 16, 2000 letter, the Office properly notified appellant that the reason he provided for not accepting the position -- that he intended to obtain medical evidence with more restrictions -- was not acceptable and allotted him 15 days to accept the position.

Subsequent to the Office's March 3, 2000 decision, appellant provided a medical report dated March 13, 2000 from Dr. Alshon stating that he could return to work full time as a distribution clerk provided he avoided leaning on a rest bar. This is contrary to the employing establishment's offer, which indicated that appellant would manually distribute mail using a rest bar. Dr. Alshon, however, did not provide any rationale or basis for his prohibition. For this reason, his report is insufficient to establish that the offered position was not suitable.

The June 1 and March 3, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 24, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁴ For a discussion of these requirements, see *C.W. Hopkins*, 47 ECAB 725 (1996).